## RESPONSE AND REMARKS

### *REJECTIONS UNDER SECTION 103(a)*

In the Office Action, Claims 64-67 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kara et al. (U.S. Patent No. 6,233,568; "*Kara*") in view of InterShipper; (Newsbytes Article, Internet Update; "*InterShipper*"). *Office Action*, Topic Nos. 3-7, pgs. 2-3.

In rejecting Claims 64-67, the Office Action states that "Kara discloses receiving information from the user, but fails to disclose the information is the shipping date." *Office Action*, Topic No. 5, p. 3. The Office Action then asserts, though, that "the specific type of information that is received is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The determining, displaying, facilitating and receiving steps would be performed the same regardless of what type of information is being received." *Office Action*, Topic No. 5, p. 3.

The Office Action rejected Claims 68-79 under 35 U.S.C. §103(a) as being unpatentable over *Kara* and *InterShipper* as applied to Claim 64 above, and further in view of UPS® On Call Air Pickup (www.apps.ups.com; "*UPS On Call*"), UPS® Service Guide (www.ups.com; "*UPS*") and FedEx® Services (www.fedex.com; "*FedEx*") and Barnett et al. (U.S. Patent No. 6,369,840; "*Barnett*"). *Office Action*, Topic Nos. 8-12, pgs. 4-6.

In rejecting the Claims, the Office Action concedes that "Kara ... fails to disclose the simultaneous display of the rates for each carrier that includes rates of different services...." *Office Action*, Topic No. 6, p. 3; *Office Action*, Topic No. 10, p. 4.

In view of the above-conceded failure by *Kara*, the Office Action asserts that "Intershipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3)." *Office Action*, Topic No. 6, p. 3; *Office Action*, Topic No. 10, p. 4.

With respect to the rejection of Claims 68-79, the Office Action further concedes that "... Kara does not specifically disclose the rates being calculated with respect to

day and time, according to the shipping date." *Office Action*, Topic No. 12, p. 5. In view of the above-conceded failure of *Kara*, the Office Action asserts though, that "[b]oth UPS® and FedEx® disclose specific services where they are guaranteed delivery by a certain time in the day. It would have been obvious ... to include the time sensitive 'urgency' services, as disclosed by FedEx® and UPS®, in order to ship thing [sic] and compete with a time advantage using guaranteed delivery times and to reduce costs, when delivery time is not of importance." *Office Action*, Topic No. 12, p. 5 (citing *FedEx*, page 1).

The Office Action then concedes that "Kara, InterShipper, UPS® and FedEx® fail to disclose the use of a simultaneous display with [sic] shows the date and time of services ..." *Office Action*, Topic No. 12, pg. 5. In order to compensate for the conceded failure of the other cited references, the Office Action then asserts that "Barnet [sic] discloses the use of a calendar which can be used for online purchasing of services (column 2, lines 63-67), where there is a graphical representation of date on one axis and time on another (See Figure 9)." *Office Action*, Topic No. 12, pgs. 5-6. The Office Action then concludes that "[i]t would have been obvious ... to have the display of rates of Kara, InterShipper, UPS® and FedEx® with respect to day and time, include the day and time, as disclosed by Barnett, in order to provide a single integrated display that allows a user to order or purchase a system based on the calendar day and time." *Office Action*, Topic No. 12, p. 6 (citing *Barnett*, column 2).

## REMARKS REGARDING SECTION 103(a) REJECTIONS

The rejections under Section 103(a) have been carefully considered. Claims 1-63 were previously cancelled and Claims 64-79 were previously added to more distinctly claim the invention. Claim 64 is amended herewith to more distinctly claim the claimed invention. Reconsideration of the application in view of the Amendments and the Response and Remarks below are respectfully requested.

A.    <u>NONE OF THE REFERENCES OF RECORD DISCLOSE DETERMINING SHIPPING RATES IN RESPONSE TO RECEIVING A SHIPPING DATE (AS CLAIMED BY CLAIM 64), IDENTIFYING DAYS AND TIMES BY WHICH A PACKAGE WOULD BE DELIVERED ACCORDING TO A SHIPPING DATE (AS CLAIMED BY CLAIMS 68 AND 69), OR IDENTIFYING A DATE FOR DELIVERY ACCORDING TO A PARTICULAR SHIPPING DATE (AS CLAIMED BY CLAIM 74)</u>

The Office Action concedes that "Kara ... fails to disclose [receiving] ... the shipping date ...." *Office Action*, Topic No. 5, p. 3. Even so, the Office Action rejects Claims 64-67, asserting that the receipt of a shipping date as claimed by Claim 64 is "... nonfunctional ... [because it] is not functionally involved in the steps recited." *Office Action*, Topic No. 5, p. 3.

It is respectfully asserted that amended Claim 64 recites functionality with respect to the receipt of the shipping date. In particular, amended Claim 64 claims determining shipping rates "... in response to receiving the set of package specifications and the indication of the shipping date ...". It is respectfully asserted that the aforementioned claimed limitations are functional and are not recited by the references of record. It is therefore respectfully asserted that amended independent Claim 64 is non-obvious in view of the references of record and is therefore in condition for allowance.

The Office Action rejected Claims 68-79 "... as being unpatentable over Kara and InterShipper as applied to claim 64, and further in view [of other references]." *Office Action*, Topic No. 8, p. 4. However, it is respectfully asserted that in addition to the functional limitations recited by amended independent Claim 64, dependent Claims 68 and 69 expressly claim additional functional limitations regarding the shipping date. In particular, dependent Claim 68 claims functional limitations for identifying days on which carriers would deliver a package to a destination, *according to the shipping date*. Claim 69 claims functional limitations for times by which carriers would deliver a package to a destination, *according to the shipping date*.

It is respectfully asserted that the identifying of a day for delivery according to a particular shipping date as claimed by Claim 68 is not disclosed by any of the

references of record. Further, it is respectfully asserted that the identifying of times for delivery according to a particular shipping date as claimed by Claim 69 is not disclosed by any of the references of record. It is therefore respectfully asserted that dependent Claims 68 and 69 are non-obvious in view of the references of record and are therefore in condition for allowance.

Yet further, even though the Office Action concedes that "Kara ... fails to disclose [receiving] ... the shipping date...," the Office Action rejects Claim 74, among others, "... as being unpatentable over Kara and InterShipper as applied to claim 64 ...," *Office Action*, Topic No. 8, p. 4), asserting that the receipt of a shipping date as claimed by Claim 64 is "... nonfunctional ... [because it] is not functionally involved in the steps recited." *Office Action*, Topic No. 5, p. 3.

However, it is respectfully asserted that, similar to Claims 64, 68 and 69, independent Claim 74 expressly and functionally involves the shipping date. For example, independent Claim 74 recites, for example, "... identifying a first day on which a first carrier would deliver a particular package to a particular destination *according to a particular shipping date* ...." It is respectfully asserted that the claimed identifying of a date for delivery according to a particular shipping date is not disclosed by any of the references of record.

In rejecting Claims 68-79, the Office Action asserts that *UPS On Call* discloses allowing a user to schedule a pickup and asserts that *UPS On Call* therefore discloses a shipping date. *Office Action*, Topic No. 11, p. 5. The Office Action further asserts that "[i]t would have been obvious ... to modify Kara, to have the ability to schedule a shipping date by the user, as taught by [*UPS On Call*]." *Office Action*, Topic No. 11, p. 5. The Office Action then asserts that "[u]sing a known technique of a user inputting the shipping date, by scheduling a pick-up time, would have been obvious ...." *Office Action*, Topic No. 11, p. 5 (citing "KSR [127 S Ct. at 1739] 'The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.'").

Applicants respectfully disagree with the assertion by the Office Action of obviousness. "[R]ejections on obviousness grounds cannot be sustained by mere

conclusory statements ...." *KSR*, 127 S.Ct. at 1741 (quoting with approval, *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

In *KSR*, the Supreme Court acknowledged that "... inventions in most, if not all, instances, rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." *KSR*, 127 S.Ct. at 1741. Accordingly, the *KSR* Court reiterated its caution against hindsight bias and *ex post* reasoning. *KSR*, 127 S.Ct. at 1742. *Accord Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc.*, 2008 U.S. App. LEXIS 6786, *14-*15 (Fed. Cir. March 31, 2008) (explaining that "a flexible TSM [teaching, suggestion, or motivation] test remains the primary guarantor against a non-statutory hindsight analysis ...."(citations omitted)).

"[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR*, 127 S.Ct. at 1741. Rather, the *KSR* Court clarified ways in which a claim could be shown to be nonobvious. In particular, the *KSR* Court indicated that combining known elements so that the combination yields more than one would expect from such an arrangement would support nonobviousness. *Cf., KSR* at 1740.

In accordance with the above-outlined *KSR* approach for supporting nonobviousness, it is respectfully asserted that the combination of limitations claimed by, for example, amended independent Claim 64 yields more than a separate application of those elements. In particular, assuming for the sake of argument only that the pickup date of *UPS On Call* discloses input of a shipping date, it is respectfully asserted that the asserted combination of the asserted pickup date of *UPS On Call*, even if combined with *Kara* would, at most, provide for input of a pickup date and provide for a calculation of shipping rates for a single pre-selected "urgency." It is respectfully asserted that there is no disclosure in either reference that teaches or suggests the combination of limitations claimed by Claim 64 regarding receiving a set of package specifications and an indication of a shipping date, and then *in response to receiving the set of package specifications and the indication of the shipping date*, determining various shipping rates for various delivery services by various carriers.

It is further respectfully asserted that, in accordance with the above-outlined *KSR*

approach for supporting nonobviousness, the combination of limitations claimed by, for example, amended dependent Claims 68 and 69 yields more than a separate application of those elements.   In particular, even assuming for the sake of argument only as described above that the pickup date of *UPS On Call* discloses input of a shipping date, it is respectfully asserted that the asserted combination of the asserted pickup date of *UPS On Call*, even if combined with *Kara* would, at most, provide for input of a pickup date and provide for a calculation of shipping rates for a single pre-selected "urgency" and would not  teach or suggest the combination of limitations claimed by dependent Claim 68 and 69 regarding, for example, identifying days and times by which carriers would deliver a package to a destination, according to a shipping date.

Further, in accordance with the above-outlined *KSR* approach for supporting nonobviousness, it is respectfully asserted that the combination of limitations claimed by, for example, amended independent Claim 74 yields more than a separate application of those elements.  In particular, even assuming for the sake of argument only as described above that the pickup date of *UPS On Call* discloses input of a shipping date, it is respectfully asserted that the asserted combination of the asserted pickup date of *UPS On Call*, even if combined with *Kara* would, at most, provide for input of a pickup date and provide for a calculation of shipping rates for a single pre-selected "urgency" and would not teach or suggest the combination of limitations claimed by Claim 74 regarding, for example, "… identifying a first day on which a first carrier would deliver a particular package to a particular destination *according to a particular shipping date ….*"

For the above-given reasons, it is therefore respectfully asserted Claims 64, 74, 68 and 69, and therefore dependent Claims 63-67, 70-73 and Claims 75-79 are non-obvious in view of the references of record and are therefore in condition for allowance.

**B.** **NEITHER INTERSHIPPER NOR KARA DISCLOSE A SIMULTANEOUS DISPLAY OF RATES OR OF DELIVERY SCHEDULE INDICIA, AND IT WOULD BE IMPROPER TO READ INTO INTERSHIPPER, A PRESUMPTION OF A SIMULTANEOUS DISPLAY GLEANED FROM THE PRESENT APPLICATION**

For the following reasons and authorities, it is respectfully asserted that the combination of limitations claimed by independent Claims 64 and 74 and dependent Claims 68 and 69, and therefore dependent Claims 63-67, 70-73 and Claims 75-79, are nonobvious in view of the combination of *Kara* and *Intershipper* because neither *Kara* nor *InterShipper*, whether considered alone or in combination with any of the other references of record, disclose, anticipate, teach or suggest a simultaneous display of rates as claimed by independent Claim 64 (which recites "... simultaneously displaying said first, second, third, and fourth shipping rates to said user ...." ) or a simultaneous display of delivery schedule indicia as claimed by independent Claim 74 and by dependent Claims 68 and 69.

The Office Action concedes that "Kara ... fails to disclose the simultaneous display of the rates for each carrier that includes rates of different services..." (*Office Action*, Topic No. 6, p. 3; *Office Action*, Topic No. 10, p. 4), but asserts that "Intershipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3)." *Office Action*, Topic No. 6, p. 3; *Office Action*, Topic No. 10, p. 4.

The Office Action is apparently asserting that the below-quoted statements should be inferred to indicate that the *InterShipper* reference simultaneously displayed its results, and that the *InterShipper* reference included multiple delivery services offered by multiple carriers in its results:

> Internet users can now get shipping rates from all major shippers in just a few seconds. Simply enter your origin, anywhere in the U.S. is OK, and destination, worldwide, along with your package weight and dimensions. The free service will return every method possible that you can use to ship your package and arrange the results in cost order, and color code the results by approximate transit time. World Wide Web: http//www.wwmerchant.com/iship.

*InterShipper*, p. 1, ¶2.

For the reasons give and under the authorities cited below, it is respectfully asserted that both such inferences are equally misplaced and unsupported.

Importantly, the cited *InterShipper* reference is a publication, not a U.S. patent. As such, there is no presumption of enablement as to the disclosure of the cited *InterShipper* reference. Moreover, as to the Claims of the present application, it is respectfully asserted that the cited *InterShipper* reference is not enabling.

Although the cited *InterShipper* reference may qualify as a prior art reference under Section 103, it may only be used as a prior art reference "… for what is in fact disclosed in it." *Reading and Bates Construction Co. v. Baker Energy Resources Corp.*, 748 F.2d 645, 652 (Fed. Cir. 1984) (finding a non-enabling promotional brochure cannot be used as a vehicle for qualifying a later filed patent as prior art).

In particular, it is respectfully asserted that, contrary to the inferences apparently asserted by the Office Action, the *InterShipper* reference never states that the *InterShipper* service would display its results simultaneously. Rather, the *InterShipper* reference states only that "[t]he free service will return every method possible that you can use to ship your package …." It does not say that such returned "every method possible" will be simultaneously displayed.

The Office Action answers that because "[t]he article states that the service will return every method possible…, and arrange the results in cost order and color code the results by approximate transit time … [t]he examiner considers this to be a simultaneous display, due to the fact that it describes the results as being returned all at once." *Office Action*, Topic No. 15, p. 6.

Contrary to the above-quoted assertion by the Office Action, it is respectfully asserted that *InterShipper* does not state that the results will be returned or displayed "all at once." Therefore, it is respectfully asserted that the Office Action is improperly importing a perspective gleaned from the present application to impermissibly read a non-existing feature into the *InterShipper* reference and the combination of that reference with the other cited references. *Cf. In re Mahurkar Patent Litigation*, 831 F. Supp. 1354, 1374-75, 28 U.S.P.Q.2d (BNA) 1801, 1817 (N.D. Ill. 1993), *aff'd*, 71 F.3d 1573, 37 U.S.P.Q.2d 1138 (Fed. Cir. 1995).

It is therefore respectfully asserted that the complete absence from the

*InterShipper* reference of any statement that the *InterShipper* service will display its results simultaneously, or even that it will return its results "all at once" as suggested by the Office Action, is evidence that the combinations of limitations of independent Claims 64 and 74 of the present application, are therefore non-obvious in view of the references of record.

Yet further, contrary to the inference apparently asserted by the Office Action that the *InterShipper* reference included multiple delivery services offered by multiple carriers in its results, it is respectfully asserted that the *InterShipper* reference never states that the *InterShipper* service would include multiple delivery services offered by the "major shippers." To the contrary, the *InterShipper* reference specifically states that "Internet users can now get shipping rates from all major shippers ...", not by multiple delivery services offered by multiple major shippers.

Accordingly, it is respectfully asserted that the combinations of the above-recited limitations of, for example, independent Claims 64 and 74, and dependent Claims 68 and 69, are therefore not disclosed, anticipated, taught or suggested by, and are nonobvious in view of, the *InterShipper* reference.

Moreover, because the Office Action relied on the *InterShipper* reference to provide the conceded missing link of a simultaneous display absent from the *Kara* reference, it is therefore respectfully asserted that the combinations of the above-recited limitations of, for example, independent Claims 64 and 74, are therefore not disclosed, anticipated, taught or suggested by, and is non-obvious in view of, the combination of the *Kara* and *InterShipper* references.

For the above-given reasons and above-cited authorities, it is respectfully asserted that the complete absence of the combinations of limitations recited by independent Claims 64 and 74 and dependent Claims 68 and 69 from the combination of references asserted by the Office Action, is strong evidence that the combination of limitations recited by independent Claims 64 and 74 and dependent Claims 68 and 69 are therefore *not* obvious in view of the references of record.

For reasons similar to those given above with respect to independent Claims 64 and 74 and dependent Claims 68 and 69, it is respectfully asserted that the combinations of limitations recited by dependent Claims 65-67, 70-73, and 75-79 are

therefore also not disclosed, anticipated, taught or suggested by the combination of the *Kara* and *InterShipper* references.

    *C.*     **THE ASSERTION BY THE OFFICE ACTION THAT KARA DISCLOSES CALCULATING RATES FOR MULTIPLE "URGENCIES" RELIES ON A USER SEQUENTIALLY ENTERING A PRE-SELECTED "URGENCY" AND DOES NOT SUPPORT REJECTION OF THE DETERMINATION CLAIMED BY AMENDED CLAIM 64 OF SHIPPING RATES FOR MULTIPLE DELIVERY SERVICES FOR MULTIPLE CARRIERS IN RESPONSE TO RECEIVING A USER'S INPUT OF PACKAGE SPECIFICATION AND A SHIPPING DATE INDICATION**

Independent Claim 64 has been amended to more distinctly claim that determining various shipping rates that various carriers would charge to deliver a package according to various respective delivery services is done "… in response to receiving the set of package specifications and the indication of the shipping date …."

As compared to the combination of limitations recited by amended independent Claim 64, it is respectfully submitted that *Kara* discloses, as shown for example in its Figure 8, Boxes 807 and 808, that a user may enter a pre-selected "Urgency" (*Kara*, Figure 8, Box 807) and that the *Kara* system would then calculate shipping rates for various carriers (*Kara*, Figure 8, Box 808). *See also, e.g., Kara*, col. 22, lines 38 – 41 ("the … program automatically calculates the [shipping] fees for each shipping service provider offering service *commensurate with the desired shipping and/or delivery parameters.*"; emphasis added). That is, according to *Kara*, a user of *Kara* must first indicate the desired shipping and/or delivery parameters (*e.g.*, Overnight, or Same Day, or Next Day, or 2-Day, or 3-Day) so that the *Kara* "program [will] automatically calculate[ ] the [shipping] fees for each shipping service provider offering service *commensurate with the desired shipping and/or delivery parameters.*" *Kara*, col. 22, lines 38 – 41 (emphasis added).

Moreover, it is respectfully asserted that none of the references of record disclose, anticipate, teach or suggest the combination of limitations claimed by amended independent Claim 64 regarding determining various shipping rates that various carriers would charge to deliver a package according to various respective

delivery services is done "... in response to receiving the set of package specifications and the indication of the shipping date ...."

Accordingly, it is respectfully asserted that amended independent Claim 64, and the claims dependent on it, namely Claims 65-73, are non-obvious in view of the references of record and are in condition for allowance.

**D.** **NONE OF THE REFERENCES OF RECORD DISCLOSE GENERATING A SIMULTANEOUS DISPLAY OF DELIVERY DAYS FOR DELIVERY OF A PACKAGE BY MULTIPLE DELIVERY SERVICES BY MULTIPLE CARRIERS**

In rejecting Claims 68-79, the Office Action further asserts the *UPS*, *UPS On Call* and *FedEx* references as well as the *Barnett* reference as grounds for its conclusion of obviousness. *Office Action*, Topic Nos. 8-12, pgs. 4-6.

However, for the following reasons and authorities, it is respectfully asserted that the Claims of the present application are non-obvious in view of the asserted combination of the *UPS*, *FedEx*, *UPS On Call* and *Barnett* references with the *Kara* and *InterShipper* references.

It is respectfully asserted that there is no disclosure in any of the references of record, including the *FedEx*, *UPS*, *UPS On Call* and *Barnett* references, of an identification of "... a [particular] day on which a [particular] carrier would deliver a particular package to a particular destination according to a particular shipping date, if [the particular] carrier were to deliver said package to said destination via a [particular] delivery service ..." as claimed by independent Claim 74.

In particular, the *FedEx* reference amounts to nothing more than a general description of various services offered by FedEx® and rules that FedEx® applies to shipments. Specifically, *FedEx* lists a number of FedEx® delivery services along with a brief description of each FedEx® delivery service.

For example, *FedEx* describes "FedEx Priority Overnight®" as providing "...delivery by 10:30 a.m. the next business day to thousands of U.S. cities in our primary service are (noon to most of the rest). Shipments may weigh up to 150 lbs., and measure up to 119" length and up to 165" in length and girth combined ... Pickup and delivery Monday-Saturday". *FedEx*, p. 1.

As a further example, *FedEx* describes "FedEx Standard Overnight®" as providing "…delivery by 3:00 p.m. the next business day to thousands of U.S. cities in our primary service area (4:30 p.m. to most of the rest, Saturday delivery not available with this service). Shipment may weigh up to 150 lbs., and measure up to 119" in length and up to 165" in length and girth combined." *FedEx*, p. 1.

As yet another example, *FedEx* describes "FedEx 2Day(SM)" as providing "delivery by 4:30 p.m. the second business day (7:30 p.m. to residential destinations) within the continental U.S. Shipments may weight up to 150 lbs., and measure up to 119" in length and up to 165" in length and girth combined." *FedEx*, p. 1.

As with the *InterShipper* reference, it is respectfully asserted that the *FedEx* reference is a non-enabling reference with respect to the claimed subject matter of the Claims of the present application, and can therefore not properly be used to support more than it actually discloses. *See Reading and Bates*, 748 F.2d at 652. Therefore, for the above-given reasons, it is respectfully asserted that the combination of limitations claimed by, for example, Claim 74, are non-obvious in view of the *FedEx* reference, even when that reference is combined with the other references of record.

Similar to the *FedEx* reference, the text of the *UPS* reference provides a description of each of its services, but fails to disclose :… an identification of "… a [particular] day on which a [particular] carrier would deliver a particular package to a particular destination according to a particular shipping date …" as claimed by Claim 74. Neither does the *UPS On Call* reference.

The *UPS* and *UPS On Call* references provide a link, "Quick Cost Calculator", with each service description. According to the *UPS* and *UPS On Call* references, the "Quick Cost Calculator" link appears to provide a user with the ability to click the link to obtain a calculation of shipping rates, and availability and delivery times, for the particular service with which the link appears. However, it is respectfully asserted that the indication by the *UPS* and *UPS On Call* references of the "Quick Cost Calculator" link still fails to disclose "… an identification of … a [particular] day on which a [particular] carrier would deliver a particular package to a particular destination according to a particular shipping date …" as claimed by Claim 74.

As with the *InterShipper* and *FedEx* references, it is respectfully asserted that

the *UPS* and *UPS On Call* references are non-enabling references with respect to the claimed subject matter of the Claims of the present application, and can therefore not properly be used to support more than it actually discloses. *See Reading and Bates*, 748 F.2d at 652. Therefore, for the above-given reasons, it is respectfully asserted that the combination of limitations claimed by, for example, Claim 74, are non-obvious in view of the *UPS* and *UPS On Call* references, even when those references are combined with the other references of record.

The Office Action then asserts that although "Kara, InterShipper, UPS® and FedEx® fail to disclose the use of a simultaneous display with [sic] shows the date and time of services[,] Barnet[t] discloses the use of a calendar which can be used for online purchasing of services (column 2, lines 63-67), where there is a graphical representation of date on one axis and time on another (See Figure 9)." *Office Action*, Topic No. 12, pg. 5-6. The Office Action then further asserts that "[i]t would have been obvious ... to have the display of rates of Kara, InterShipper, UPS® and FedEx® with respect to day and time, include the day and time, as disclosed by Barnett, in order to provide a single integrated display that allows a user to order or purchase a system based on the calendar day and time (See Barnett, column 2)." *Office Action*, Topic No. 12, p. 6.

Applicants respectfully disagree that the above-quoted assertion of obviousness is properly supported by sufficient evidence as required for an obviousness rejection under MPEP §706.02(j) and MPEP §2143. In particular, it is respectfully asserted that there is no disclosure in *Barnett*, and for the reasons previously given above in any of the other cited references, of any "... an identification of ... a [particular] day on which a [particular] carrier would deliver a particular package to a particular destination according to a particular shipping date ..." as claimed by Claim 74.

It is respectfully asserted that the combination of limitations of, for example, Claim 74, are predictive, and determinative in nature – that is, the limitations recite an identification of a date for a future event (a delivery) according to a particular reference date (a shipping date). As compared to being predictive or determinative, *Barnett* does not identify or determine a date on which a particular event will occur with respect to a

particular reference date, but instead merely reports dates and times on which events with pre-determined schedules are so scheduled to occur.

Yet further, as compared to the limitations of, for example, Claim 68, which by virtue of its dependency on Claim 64, claims limitations for simultaneously displaying shipping rates for each of multiple delivery services offered by each of multiple carriers, *Barnett* does not disclose any simultaneous display of rates (*see e.g., Barnett,* FIG. 9). In fact, it is respectfully submitted that *Barnett* does not disclose any display of rates by the *Barnett* system. Moreover, for the reasons previously given above, it is respectfully asserted that none of the references of record disclose a simultaneous display of rates for multiple delivery services offered by multiple carriers.

For the reasons given above, it is respectfully asserted that the complete absence of the combination of limitations recited by independent Claims 64 and 74 from the combination of references asserted by the Office Action, is strong evidence that the combination of limitations recited by independent Claims 64 and 74 are therefore *not* obvious.

As compared to the references of record, it is respectfully asserted that one advantage of a shipping management computer system according to various embodiments of the system claimed in Claim 74 is that such embodiments allow for a simultaneous cross-comparison of the various schedules according to which a package would be delivered via multiple delivery services provided by each of a plurality of carriers. For example, such a system could be configured for simultaneously displaying: (1) the date on which UPS would deliver a package via an "overnight" delivery service; (2) the date on which UPS would deliver the package via a "second day" delivery service; (3) the date on which Federal Express would deliver the package via an "overnight" delivery service; and (4) the date on which Federal Express would deliver the package via a "second day" delivery service. It is respectfully asserted that such a display may be useful in allowing users to quickly compare the days on which a package would actually be delivered if the user were to ship the package on a particular shipping date via one of various delivery services. This can be especially useful if different carriers have different policies regarding, for example, whether a package sent
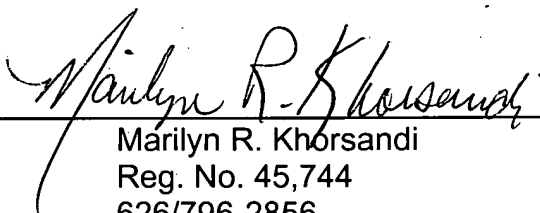
via overnight delivery on a Friday would be delivered on the next weekday (Saturday) or on the next business day (Monday).

For the above-given reason and authorities, it is respectfully asserted that the above-cited limitations of independent Claims 64 and 74, and therefore of the Claims dependent on them, namely Claims 65-73 and 75-79, are not disclosed, anticipated, taught or suggested by any of the references of record, whether considered alone or in combination with any other reference of record.

## CONCLUSION

For the foregoing reasons and authorities, it is respectfully asserted that the invention disclosed and claimed by Claims 64-79 of the present application are not fairly taught by any of the references of record taken either alone or in combination, are distinguished from, are not obvious in view of, and are therefore patentable over, the references of record. Accordingly, it is respectfully asserted that the application is condition for allowance. Accordingly, reconsideration and allowance of Claims 64-79 are respectfully requested.

Respectfully submitted,
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